

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

SCOTT HOWARD KIMBALL (1),

Defendant.

Case Nos.: 15CR0902-JLS

**ORDER DISMISSING
DEFENDANT'S RULE 21(A)(1)
WRIT OF MANDAMUS/MOTION
TO COMPEL FOR LACK OF
JURISDICTION**

[ECF No. 213]

Presently before the Court is a motion captioned “In Support of 28 U.S.C. Section 2255, Rule 21 (A)(1) Writ of Mandamus/Motion to Compel” filed by Defendant Kimball (ECF 213). The motion seeks an order compelling the government to produce the “complete 3 page (CAD) report” and “the chain of custody evidence form.” *Id.*

This motion follows the Court’s denial of Defendant’s motion under 28 U.S.C. § 2255, and denial of a motion and supplemental motion to compel discovery (ECF 210). Defendant filed a notice of appeal of that order and it appears that a motion for issuance of a certificate of appealability is pending before the Ninth Circuit.¹ In the order that has been appealed, the Court denied Defendant’s motion and supplemental motion to compel the

¹ Ninth Circuit Court of Appeals Case: 22-55868, Docket No. 5. The Court notes that the Court of Appeals’ docket also reflects a letter from Defendant requesting a stay of his motion for issuance of certificate of appealability while his motion to compel is pending in this Court. *Id.*, Docket No. 7.

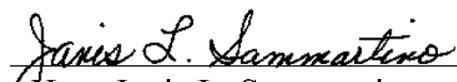
1 discovery of the same documents sought in Defendant's most recent filing, an alleged
 2 missing page of a "Computer-Aided Dispatch" ("CAD") report generated at the time of
 3 Defendant's arrest² and "chain of custody form."

4 Generally, the filing of a notice of appeal divests the district court of jurisdiction of
 5 any matter which is the subject of the appeal. *United States v. Phelps*, 283 F.3d 1176, 1181
 6 n.5 (9th Cir. 2002), citing *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58
 7 (1982). This is a judge-made rule and the principle of divestiture is not absolute; the
 8 purpose of the rule is to promote judicial economy and avoid the confusion of having the
 9 same issues before two courts simultaneously. *Id.*, citing *Natural Res. Def. Council v.*
 10 *Southwest Marine, Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001).

11 Here, the issues raised in Defendant's Rule 21(A)(1) Writ of Mandamus/Motion to
 12 Compel are among the issues addressed in the pending appeal. Thus, the Court finds
 13 that the principles of judicial economy and avoidance of confusion warrant the conclusion
 14 that this Court is divested of jurisdiction by virtue of Defendant's filing of the notice of
 15 appeal. Accordingly, Defendant's Rule 21(A)(1) Writ of Mandamus/Motion to Compel is
 16 **Dismissed** for lack of jurisdiction.

17 IT IS SO ORDERED.

18 Dated: September 15, 2023


 19 Hon. Janis L. Sammartino
 20 United States District Judge

27 ² Defendant contends that the report provided to him in pretrial discovery was missing a page and that the
 28 missing page was exculpatory and improperly withheld by the prosecution. These claims were rejected
 in the Court's order denying Defendant's motion under § 2255 and denying his discovery motions.